No. 635

In the Supreme Court of the United States

OCTOBER TERM, 1960

THE FEDERAL LAND BANK OF WICHITA, PETITIONER

v.

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF KIOWA, STATE OF KANSAS, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF KANSAS

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

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MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

Pursuant to Rule 42(4) of the Rules of this Court, the Solicitor General, on behalf of the United States, files this memorandum as *amicus curiae,* and urges that the petition for a writ of certiorari in this case be granted.

In the course of its regular farm mortgage business, after default on one of its loans secured by a mortgage, the petitioner Bank acquired by foreclosure title to a tract of land in Kiowa County, Kansas. Upon selling the tract, the Bank reserved an undivided one-half mineral interest therein. It later granted oil and gas leases covering the property. During the years 1947 through 1948, the Bank paid real

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estate taxes on its interest in the mineral estate as such.

In 1957, Kiowa County levied and assessed a personal property tax against the interest of the Bank in the oil and gas lease and upon the royalty interest derived therefrom. This tax was levied pursuant to the provisions of General Statutes of Kansas, Sections 79–329 to 79–334, which, as the court below held (187 Kan. 148, 354 P. 2d 679, 681), provide that, for the purpose of valuation and taxation, oil and gas leases are declared to be personal property and shall be assessed and taxed as such to the owner thereof. The Bank brought this action in the District Court of Kiowa County, Kansas to enjoin the levy and collection of the tax on the ground that the bank is exempt from the payment of all taxes, except real estate taxes. The Bank relied on Section 26, Federal Farm Loan Act, c. 245, 39 Stat. 360, 380 (12 U.S.C. 931–933), which directs "That every Federal land bank * * * shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate * * *." The trial court denied the injunction and the Supreme Court of Kansas affirmed that denial. In upholding the tax, that court stated that the statutory exemption "should apply only when the bank is engaged in the furtherance of its governmental function", and that the holding of royalty and mineral rights by a Federal Land Bank is not in furtherance of a federal purpose.

The decision below disregards the principle set out by this Court in *Federal Land Bank* v. *Bismarck Co.*, 314 U.S. 95, 102:

> The argument that the lending functions of the federal land banks are proprietary rather than governmental misconceives the nature of the federal government with respect to every function which it performs. The federal government is one of delegated powers, and from that it necessarily follows that any constitutional exercise of its delegated powers is governmental. *Graves* v. *New York ex rel. O'Keefe,* 306 U.S. 466, 477. It also follows that, when Congress constitutionally creates a corporation through which the federal government lawfully acts, the activities of such corporation are governmental. *Pittman* v. *Home Owners' Loan Corp.,* 308 U.S. 21, 32; *Graves* v. *New York ex rel. O'Keefe, supra,* 477.

See, also, *Mayo* v. *United States,* 319 U.S. 441, 444. The opinion below repeats an argument presented, but rejected, in *Smith* v. *Kansas City Title Co.,* 255 U.S. 180, 181–192.

The court below construed the Bank's enabling statute as not "authorizing a federal land bank to hold or acquire property interests for profit or speculation." This Court, however, in *Federal Land Bank* v. *Priddy,* 295 U.S. 229, 233, construed the statute otherwise, stating that "The operations of the federal land banks are, in part at least, for profit," and "they may acquire and dispose of property in their own right, including land." Nevertheless, it pointed out (p. 235) that—

> There is thus a specific grant of immunity from taxation, to a corporation having its own purposes as well as those of the United States, and interested in profits on its own account * * *.

The decision below also is in conflict with the decisions of this Court repeatedly sustaining the principle that it is for Congress to determine the extent to which federal instrumentalities shall be exempt from taxes. *Smith* v. *Kansas City Title Co.*, 255 U.S. 180, 211–213; *Federal Land Bank* v. *Priddy*, 295 U.S. 229, 235; *Cleveland* v. *United States*, 323 U.S. 329, 333; *Carson* v. *Roane-Anderson Co.*, 342 U.S. 232, 233–234.[1]

Moreover, the opinion below implies a power in state authority to exercise supervisory jurisdiction over the activities of a federal instrumentality. On the contrary, Congress has expressly delegated to the Farm Credit Administration the power to exercise general supervisory authority over the Federal Land Banks. Federal Farm Loan Act, *supra*, Sec. 17 (12 U.S.C. 831(i)). See *Greene County Nat. F. L. Ass'n* v. *Federal Land Bank*, 152 F. 2d 215, 220 (C.A. 6), certiorari denied, 328 U.S. 834.

Although the decision itself concerns only a particular state tax on property of a single land bank, yet, as the petition for certiorari points out, the total property involved in the case of this petitioner, and especially of all twelve Federal Land Banks, is most

[1] The opinion below suggests, but does not decide, that the Bank had no authority to grant the lease which was taxed. Even if the Bank lacked authority, it does in fact hold the lease, which is personal property, and so is in terms within the congressionally-granted tax immunity. The court below cites no authority for the proposition that tax-exempt property in fact held by the United States or its instrumentality is subject to taxation because the right on the part of the instrumentality to hold the property may be questioned.

substantial. Moreover, the decision below calls into question the extent of Congress's power to provide for a tax exemption of any federal instrumentality by making the scope of the exemption turn, not on what Congress has provided, but upon the State's interpretation of what activities of that instrumentality are to be considered as governmental in character.

For the foregoing reasons and those stated in the petition, it is respectfully submitted that the petition for certiorari should be granted.

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